little merit in this submission particularly having regard to the recent decision of the Privy Council in *New India Assurance Co. Ltd.* v. *Yeo Beng Chow*[3] and the remarks of Viscount Dilhorne in his judgment in that case.

Finally there is a complaint made by the respondents that the two findings of the arbitrator Mr. Godwin in paragraph 2(i) of award are bad in law and not supported by the evidence and should therefore be set aside or remitted.

I have carefully considered the evidence that was placed before the arbitrators and the submissions made by the counsel on this aspect of the case and I am satisfied that there was sufficient evidence for the arbitrator to make the two findings that he did and I see no reason for interfering with both these findings of his. As regards his second finding though he has said there was *no evidence* to show that the insured failed to take all reasonable steps to maintain the vehicle in question in an efficient condition what he was clearly implying was that there was no reliable or satisfactory evidence in his opinion before him on the point. I do not see any justification for me to interfere with these two findings of the said arbitrator which he was well entitled to make on the evidence that was led before him.

For these reasons this application of the respondents is dismissed with costs and the joint final award of the arbitrators is confirmed.

Application dismissed.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

RE DAVID MARSHALL; LAW SOCIETY OF SINGAPORE v. DAVID SAUL MARSHALL

[O.C.J. (Wee Chong Jin C.J., Chua and Winslow JJ.)

October 7, 1972]

[Singapore — Originating Summons No. 275 of 1972]

Advocates & Solicitors — Breach of undertaking given to Attorney-General in the presence of the Chief Justice — Undertaking not to disclose pleadings to the press — Findings of disciplinary committee — Grossly improper conduct in the discharge of professional duties — Legal Profession Act (Cap. 217), ss. 84, 86 & 93(2) — Costs.

The respondent, a senior advocate and solicitor of the Supreme Court, acted for the managing editor and three other employees of the *Nanyang Siang Pau*, a Chinese language daily newspaper, in their applications for *habeas corpus* to the High Court.

The affidavits in support of the *habeas corpus* applications were affirmed by the four applicants and these were filed in the registry of the Supreme Court. The *habeas corpus* applications were fixed for hearing on May 26, 1971. At the hearing, these applications were adjourned to June 7, 1971. Both the Attorney-General who appeared for the Government and the respondent were requested to see the Chief Justice in his chambers. Whilst in the Chief Justice's chambers, the Attorney-General intending to prevent publication of the affidavits before the hearing fixed on June 7, 1971, drew the attention of the Chief Justice to the fact that affidavits and their contents had a habit of being leaked out to the press and the public at large before the hearing. The respondent thereupon volunteered an oral undertaking in the following terms:—

> "The Attorney-General need have no anxiety about our office because we never give any pleadings to the press before trial and I can assure you that neither I nor my office have given these affidavits to them for publication."

The respondent, however, before June 7, 1971 sent: (a) five sets of the affidavits together with explanatory documents by registered post to the Secretary-General of Amnesty International; (b) two sets of the affidavits to Sir Elwyn Jones Q.C.; (c) one set of the affidavits to Mr. Harold Ebens, the editor of the London *Sunday Times*.

All the affidavits sent to the persons above (except one) had the headings deleted and the words "Instructions to Counsel" substituted. The jurats of these affidavits were also deleted.

On June 4, 1971, the Chief Justice ordered certain portions of these affidavits to be struck out.

The disciplinary committee on the above facts held that the respondent's undertaking given to the Attorney-General in the presence of the Chief Justice, was a general undertaking not to release the affidavits to the press. This undertaking was given by the respondent in his professional capacity, and the respondent had, therefore, committed a breach of the undertaking in sending the contents of the affidavits to the persons mentioned above. On reference to the court,

Held: (1) it was clear beyond any real doubt that the respondent meant the undertaking to be understood by the Attorney-General that neither the respondent nor his office would be a party to the contents of the affidavits being made available to the "press" using the expression "press" in its generally accepted connotation without any qualification whatsoever;

(2) it was plain from the disciplinary committee's report and the facts that the respondent acted with premeditation and deliberation and the inference can clearly be drawn that he must have forseen that one of the consequences of his making available to the press the contents of the affidavits was the likelihood of the contents being published in the news media;

(3) the test of what constitutes "grossly improper conduct in the discharge of his professional duties" has been laid down in many cases to mean conduct which is dishonourable to him as a man and dishonourable in his profession. Applying that test and taking into consideration the fact that the respondent was a leading member of the legal profession in Singapore, that the undertaking was given to the Attorney-General in the presence of the Chief Justice, that the matter had aroused considerable public interest and the interest of journalists and pressmen all over the world, and the fact that the legal profession here must be zealous and constantly endeavour to uphold its standing in the community by strict adherence to the ethics and etiquette accepted as binding by the profession on its members; the respondent should be suspended from practice for a period of six months, the period of suspension to commence from the date of the order.

ORIGINATING SUMMONS.

H. E. Cashin on behalf of the applicants.

L. A. J. Smith (*Eugene Phoa* with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering judgment of the court): The respondent is an advocate and solicitor of the Supreme Court who has been in practice for nearly 35 years and is generally acknowledged by the members of the legal profession to be one of its leaders.

He now appears before us to show cause why he should not be dealt with under section 84 of the Legal Profession Act (Cap. 217). This section is, so far as

material, in the following terms:—

"84.—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

(2) Such due cause may be shown by proof that such person —

....

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty...".

It is unnecessary to set out in full the other relevant provisions of the Act. Suffice it to say that under section 86 any complaint of the conduct of an advocate and solicitor in his professional capacity must be made in the first place to the Law Society and the Council of the Law Society must refer the complaint to the Inquiry Committee which is a committee comprising five members or former members of the Council appointed by the Council.

Under section 87 the Inquiry Committee is required to investigate the matter and report to the Council on the matter. Under section 88 the Council is required to consider the report of the Inquiry Committee and according to the circumstances of the case the Council shall determine whether or not there should be a formal investigation by a Disciplinary Committee.

Under section 90, if the Council determines under section 88 that there should be a formal investigation, the Council shall apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter. Under section 93 the Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine whether or not cause of sufficient gravity for disciplinary action exists under section 84. They are required to draw up their findings and determination in the form of a report of which a copy must be submitted to the Chief Justice and to the Society. The advocate and solicitor concerned and the person who made the complaint are entitled to a copy of the report on application.

By section 94, if the determination of the Disciplinary Committee under section 93 is that cause of sufficient gravity exists for disciplinary action under section 84, the Law Society must proceed to make an application in accordance with the provisions of section 98.

By section 98 an application that a solicitor be struck off the roll or suspended from practice or censured shall be made by Originating Summons *ex parte* to a judge of the Supreme Court sitting in Chambers for an order calling upon the solicitor to show cause. The order to show cause is served on the solicitor concerned and the application shall then be heard by a court of three judges of whom the Chief Justice must be one. The judge who made the order to show cause is not thereby disqualified from sitting as a member of the court of three judges.

The complaint in the present case arose out of four *habeas corpus* applications made by way of originating motions to the High Court made by four persons who had been arrested and detained under orders of detention made under the Internal Security Act. All these four persons were connected with a leading Singapore Chinese language daily newspaper, the *Nanyang Siang Pau* being the managing director, the editor-in-chief, a leader writer and the public relations manager of the *Nanyang Siang Pau*. Affidavits in support of their *habeas corpus* applications were affirmed by each of these four persons and these affidavits were filed in the Registry of the Court. The respondent in the present case acted as the solicitor for the four detained persons. The Attorney-General represented the Government. The motions were on the list for hearing before the Chief Justice in open court on 26th May 1971 and, for reasons which are immaterial for present purposes, they were adjourned to 7th June 1971 for hearing.

The arrests and subsequent detentions of these four persons aroused considerable public interest both in Singapore and internationally, particularly the international press, because from the beginning of 1971, the Government had taken strong action against three leading newspapers one of which was the *Nanyang Siang Pau* and which action led to the newspapers airing their grievances against the Government in their publications. The main topic of controversy concerned freedom of the press. Against this background when the High Court sat on 26th May 1971, there were present in court to report the proceedings members of the press including international news agencies not only of Singapore but also of other countries. It was not in dispute that on that date the respondent was aware that the International Press Institute was holding a conference at Helsinki commencing on 7th June 1971 and that the Prime Minister of Singapore would be going to Helsinki as the main guest speaker at that conference. At the time the chairman of the International Press Institute was a lady who was also the principal shareholder of one of the newspapers in Singapore against which the Government had taken strong action.

After the hearing on 26th May 1971 was adjourned the Attorney-General and the respondent were requested by the Chief Justice to see him in his chambers. At the conclusion of their interview and, while they were in the outer chambers of the Chief Justice, the Attorney-General, intending to prevent the publication of the affidavits affirmed by the four detained *Nanyang Siang Pau* executives before they were read in court at the adjourned hearing fixed for 7th June 1971, drew the attention of the Chief Justice to the fact that affidavits and their contents had a habit of being leaked out to the press and the public at large the moment they were filed in the registry. The respondent thereupon volunteered an oral undertaking in the following terms:—

"The Attorney-General need have no anxiety about our office because we never gave any pleadings to the press before trial and I can assure him that neither I nor my office will give these affidavits to them for publication."

However, two days later on 28th May 1971 the respondent sent by registered airmail post five sets of the affidavits of the detainees (together with explanatory documents) to a Mr. Martin Ennals, the Secretary-General of Amnesty International in London. The respondent was aware, as appears from the documen-

tary evidence before the Disciplinary Committee, that Amnesty International is an organisation dedicated to championing the cause "of prisoners of unconscionable executive action." The "affidavits" sent to Mr. Martin Ennals did not contain the title of the proceedings and the word "affidavit" as well as the jurats were deleted and instead they were headed "Instructions to Counsel" but the rest of the contents of the affidavits filed in the registry were left intact.

On 29th May 1971 the respondent sent to England two sets of the affidavits to Sir Elwyn Jones Q.C. and another set to Mr. Harold Evans, the editor of the London *Sunday Times*. All the affidavits sent to England had the headings and the jurats deleted. The word "affidavit" was also deleted from all the copies and replaced by the words "Instructions to Counsel" but in the copies to Sir Elwyn Jones Q.C. the word "affidavit" was not deleted.

On 1st June 1971 the respondent called on the Attorney-General and during the conversation between them the respondent informed the Attorney-General that he had sent copies of the affidavits to persons in London. We quote the evidence of the respondent as recorded by the Disciplinary Committee:—

"I said to the A.G. 'I had sent these affidavits to London and they could be circulated to the press after the 7th June and come back to Singapore in their un-expurgated form. I did mention to him that Ennal and I thought Dingle Foot were going to Helsinki and that these affidavits would be made available to persons selected by them. His reaction was 'You sent the affidavits'. I thought he had in mind the technical rule that you cannot disclose official documents which were not yet public documents. I explained that they were sent not as affidavits but as instructions. To my mind the technical rule of non-publication was not breached. I also explained that in any event I sent them for a legitimate purpose. I told him I was entitled to send them as they were clients' instructions for a legitimate purpose. When I used the word instructions I meant instructions to me from my clients. Referred to bundle B, heading on page 1 is instructions etc. It was intended that formal parts should have been omitted. There was neither reference to what took place in the C.J.'s chambers on the 26th May and my mind was not directed to what took place in the C.J.'s chambers on that day. My dismay was at the affidavits being given to these people in their unexpurgated form. If I considered my action in sending the documents inconsistent or in breach of what took place in the C.J.'s chambers on the 26th May, if I had inadvertently breached my undertaking I would have crawled to the A.G. and the C.J. There was no mention of an undertaking, no reference to the 26th May or undertaking directly or indirectly or by innuendo or that I had been in breach of such undertaking. The A.G. was cordial in view of our relationship. A.G. was surprised I sent the affidavits and in fairness to him he was annoyed. I can now see that the A.G. had a legitimate right at the time to believe that I was acting dishonestly because he did not know my reason for having sent the affidavits to London."

At the same meeting the respondent was told by the Attorney-General that an application would be made under Order 41 rule 6 to strike out portions of the affidavits as being scandalous, irrelevant or otherwise oppressive. Later the same day the Attorney-General sent a letter to the respondent expressing the opinion that the respondent had committed a breach of the undertaking and requesting the respondent to cable the recipients of the affidavits to refrain from publishing their contents. A heated argument took place between them over the telephone in consequence of this letter and as a compromise the respondent agreed to send telegrams to the recipients in return for the Attorney-General withdrawing his letter.

Notwithstanding what had transpired on the 1st June 1971, the respondent on the next day, 2nd June, handed in Singapore to a Mr. Derek Round, a member of the Secretariat of the International Press Institute, seven sets of the affidavits as originally affirmed and filed. These affidavits and other documents which were to be taken by Mr. Round to Helsinki were handed over by the respondent knowing that Mr. Round had been requested by the International Press Institute to come to Singapore to obtain background information about, *inter alia*, the *Nanyang Siang Pau* and information on recent developments in connection with the arrests of the four detainees with the intention of taking this information to the conference to be held at Helsinki. The respondent according to Mr. Round reluctantly made available the affidavits after making it "quite clear that if anything was published before it came before the court it would be a contempt of court".

On 4th June 1971 the Chief Justice in chambers ordered certain portions of each of the four affidavits filed in support of the *habeas corpus* proceedings to be struck out.

On 6th June 1971, at the request of the Chairman and the Director of the International Press Institute, a briefing for members of the International Press Institute and representatives of the international news agencies was held at Helsinki and Mr. Round was asked to make available to representatives of the news agencies material which he had obtained in Singapore from the respondent. Prior to the briefing Mr. Round on his own initiative had handed copies of the affidavits to representatives of the United Press and the Associated Press. He had also handed a set of the affidavits to a representative of Reuters News Agency to give to their correspondents covering the conference.

The Disciplinary Committee found that the respondent's undertaking given to the Attorney-General in the presence of the Chief Justice was a general undertaking not to release the affidavits to the press given by the respondent in his professional capacity and that the respondent had committed a breach thereof. The Disciplinary Committee also found that even if the undertaking was limited to the press in Singapore the respondent had committed a breach thereof. They further found that the respondent's action in releasing the seven sets of the affidavits to Mr. Derek Round for the purposes abovementioned was grossly improper and that no distinction can be drawn between a release to the press and an indirect release to a group of journalists for briefing purposes.

They found that the respondent by his action had been guilty of grossly improper conduct in the discharge of his professional duties as prescribed by section 84(2)(b) of the Act and in the exercise of the powers conferred on them by section 93(2) they made an order for costs against the respondent.

Mr. L. A. J. Smith, counsel for the respondent, contends that the Disciplinary Committee were wrong in finding that the undertaking was an undertaking not

to release the affidavits to the press. He contends that the undertaking in the terms as set out in the report of the Disciplinary Committee ought to be construed to mean that the respondent undertook that he would not give the affidavits to the press for publication. We understand the argument to be that there could be no breach of the undertaking if the respondent released the affidavits to any member of the press on condition that he agreed that he would not publish or cause their contents to be published in the news media. We are unable to accept this construction and indeed this submission does not appear to have been raised before the Disciplinary Committee. In our opinion having regard to the surrounding circumstances and the occasion which led to the respondent volunteering the undertaking it is clear beyond any real doubt that the respondent meant it to be understood by the Attorney-General that neither he nor his office would be a party to the contents of the affidavits being made available to the press, using the expression "press" in its generally accepted connotation, without any qualification whatsoever.

It seems to us that the respondent, who in the words of the Disciplinary Committee is "a person of standing and intelligence", must have known that the press would be under no obligation to the Attorney-General not to publish the contents of the affidavits once these were made available to them. It also seems to us not a valid answer for the respondent to say that there was no breach of his undertaking if he made available to the press the contents of the affidavits only after obtaining solemn assurances from the press that the contents thereof would not be published before 7th June 1971 when the affidavits would be read in court at the hearing of the *habeas corpus* applications.

Next, it is submitted on behalf of the respondent that on the facts as found by the Disciplinary Committee the finding that the respondent was guilty of grossly improper conduct in the discharge of his professional duties within the meaning of section 84(2)(b) is wrong in law. It is submitted that the act or acts which the respondent did must be found to be a premeditated and deliberate act or acts and with foresight that the consequence of his act or acts would be the publication of the contents of the affidavits in the news media. The argument is that unless an act is premeditated and deliberate and its consequences foreseen then there can be no moral turpitude and without the element of moral turpitude it cannot be said that a solicitor is guilty of grossly improper conduct in the discharge of his professional duties. It is said that the Disciplinary Committee made no findings that the respondent's act in giving copies of the affidavits to the press was premeditated, deliberate and with foresight of its consequences. In our judgement it is plain from the Disciplinary Committee's report and it is plain from the facts we have already outlined that the respondent acted with premeditation and deliberation and the inference can clearly be drawn that he must have foreseen that one consequence of his making available to the press the contents of the affidavits was the likelihood of the contents being published in the news media.

The test of what constitutes "grossly improper conduct in the discharge of his professional duties" in section 84 has been laid down in many cases as meaning conduct which is dishonourable to him as a man and dishonourable in his profession. Applying this test there was here abundant evidence on which the Disciplinary Committee could come to the conclusion that the respondent was guilty of grossly improper conduct in the discharge of his professional duties.

We now have to consider whether the respondent should be struck off the roll or suspended from practice for any period not exceeding two years or censured. Under the Act this responsibility falls on this court. Apart from the facts we bear in mind that the respondent, as we have said, is a leading member of the legal profession in Singapore. We also bear in mind that the undertaking given by the respondent was given to the Attorney-General in the presence of the Chief Justice in relation to *habeas corpus* proceedings, which were to be heard by the Chief Justice, by executives of a leading Chinese daily newspaper who had been detained by executive orders under the Internal Security Act. We bear in mind that the matter had aroused considerable public interest and that the detainees were members of the press; that the matter had aroused the interest of journalists and pressmen all over the world and that it was known to the respondent that the press in the form of the International Press Institute was about to hold a conference at Helsinki.

We further bear in mind the real necessity that the legal profession here must be zealous of and constantly endeavour to uphold its standing in the community by strict adherence to the ethics and etiquette accepted as binding by the profession on all its members. We are also aware of the provisions of section 84(4) of the Act which provides that we may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made.

Taking all these matters into consideration we order that the respondent be suspended from practice for a period of six months, the period of suspension to commence from the date we make this order. We further order that the respondent pay all the costs before the Disciplinary Committee and before this court, including all the costs of the Law Society in the proceedings.

Order accordingly.

Solicitors: *Eugene Phoa & Co.*